

HOUSE BILL 791

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4r1528
CF SB 587

By: **Delegate Bromwell (By Request)**

Introduced and read first time: February 3, 2014

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2014

CHAPTER _____

1 AN ACT concerning

2 **State Board of Examiners in Optometry – Cease and Desist Orders,**
3 **Injunctive Relief, and Penalties**

4 FOR the purpose of authorizing the State Board of Examiners in Optometry to issue a
5 cease and desist order or obtain injunctive relief for a violation of certain
6 provisions of law; providing that certain actions may be brought by certain
7 persons in certain counties; providing that proof of certain damages is not
8 required for certain actions; providing that a person who violates certain
9 provisions of law is subject to a civil fine not exceeding a certain amount to be
10 assessed by the Board in accordance with certain regulations; ~~requiring the~~
11 ~~Board to pay certain penalties into the State Board of Examiners in Optometry~~
12 ~~Fund~~; providing for the application of certain provisions of this Act; and
13 generally relating to the State Board of Examiners in Optometry, cease and
14 desist orders, injunctive relief, and penalties.

15 BY adding to

16 Article – Health Occupations

17 Section 11–320

18 Annotated Code of Maryland

19 (2009 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, without amendments,

21 Article – Health Occupations

22 Section 11–501, 11–502, and 11–504

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2009 Replacement Volume and 2013 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Health Occupations
4 Section 11–505
5 Annotated Code of Maryland
6 (2009 Replacement Volume and 2013 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article – Health Occupations**

10 **11–320.**

11 **(A) THIS SECTION DOES NOT APPLY TO ~~AN~~:**

12 **(1) AN INDIVIDUAL LICENSED UNDER TITLE 14, SUBTITLE 3 OF**
13 **THIS ARTICLE; OR**

14 **(2) AN INDIVIDUAL SUPERVISED BY AN INDIVIDUAL LICENSED**
15 **UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.**

16 **(B) THE BOARD MAY ISSUE A CEASE AND DESIST ORDER OR OBTAIN**
17 **INJUNCTIVE RELIEF FOR A VIOLATION OF ANY PROVISION OF § 11–313 OF THIS**
18 **SUBTITLE OR § 11–501, § 11–502, OR § 11–504 OF THIS TITLE.**

19 **(C) (1) AN ACTION MAY BE MAINTAINED IN THE NAME OF THE STATE**
20 **OR THE BOARD TO ENJOIN:**

21 **(I) THE UNAUTHORIZED PRACTICE OF OPTOMETRY;**

22 **(II) THE MISREPRESENTATION OF THE PRACTICE OF**
23 **OPTOMETRY;**

24 **(III) THE ACT OF KNOWINGLY DISPENSING CONTACT LENSES**
25 **OR REPLACEMENT CONTACT LENSES WITHOUT A VALID AND UNEXPIRED**
26 **PRESCRIPTION OR A REPLACEMENT CONTACT LENS PRESCRIPTION; OR**

27 **(IV) CONDUCT THAT IS GROUNDS FOR DISCIPLINARY**
28 **ACTION UNDER § 11–313 OF THIS SUBTITLE.**

29 **(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY:**

30 **(I) THE BOARD, IN ITS OWN NAME;**

1 **(II) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE;**
2 **OR**

3 **(III) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.**

4 **(3) AN ACTION UNDER THIS SUBSECTION SHALL BE BROUGHT IN**
5 **THE COUNTY WHERE THE DEFENDANT:**

6 **(I) RESIDES; OR**

7 **(II) ENGAGES IN THE ACT SOUGHT TO BE ENJOINED.**

8 **(4) PROOF OF ACTUAL DAMAGE OR THAT ANY PERSON WILL**
9 **SUSTAIN ANY DAMAGE IF AN INJUNCTION IS NOT GRANTED IS NOT REQUIRED**
10 **FOR AN ACTION UNDER THIS SUBSECTION.**

11 **(5) AN ACTION UNDER THIS SUBSECTION IS IN ADDITION TO AND**
12 **NOT INSTEAD OF CRIMINAL PROSECUTION FOR DISCIPLINARY ACTION UNDER §**
13 **11-313 OF THIS SUBTITLE OR THE UNAUTHORIZED PRACTICE OF OPTOMETRY**
14 **UNDER §§ 11-501, 11-502, AND 11-504 OF THIS TITLE.**

15 11-501.

16 Except as otherwise provided in this title, a person may not practice, attempt to
17 practice, or offer to practice optometry in this State unless licensed by the Board.

18 11-502.

19 Unless licensed to practice optometry under this title, a person may not
20 represent to the public by title, by description of services, methods, or procedures, or
21 otherwise, that the person practices optometry.

22 11-504.

23 (a) Knowingly selling or dispensing contact lenses or replacement contact
24 lenses without a valid and unexpired prescription or replacement contact lens
25 prescription shall be considered a violation of this title.

26 (b) The Board shall investigate any alleged violation of this section or §
27 11-404.4 of this title and may, notwithstanding § 11-205 of this title:

28 (1) Issue subpoenas, administer oaths, and examine witnesses; and

29 (2) Enforce any provision of this title by injunction or other
30 appropriate proceedings.

1 (c) An action under this section is in addition to and not instead of criminal
2 prosecution under § 11-505 of this subtitle.

3 11-505.

4 (A) A person who violates any provision of this title is guilty of a
5 misdemeanor and on conviction is subject to a fine not exceeding \$500 or
6 imprisonment not exceeding 6 months or both.

7 (B) (1) **THIS SUBSECTION DOES NOT APPLY TO ~~AN~~:**

8 (I) AN INDIVIDUAL LICENSED UNDER TITLE 14, SUBTITLE
9 3 OF THIS ARTICLE; OR

10 (II) AN INDIVIDUAL SUPERVISED BY AN INDIVIDUAL
11 LICENSED UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.

12 (2) **A PERSON WHO VIOLATES § 11-501, § 11-502, OR § 11-504 OF**
13 **THIS SUBTITLE IS SUBJECT TO A CIVIL FINE NOT EXCEEDING \$50,000 TO BE**
14 **ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY**
15 **THE BOARD.**

16 (3) ~~THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER~~
17 ~~THIS SUBSECTION INTO THE STATE BOARD OF EXAMINERS IN OPTOMETRY~~
18 ~~FUND.~~

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 July 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.